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STATE OF MICHIGAN



SIXTH PROBATE COURT

THOMAS B. NORTH
PROBATE JUDGE

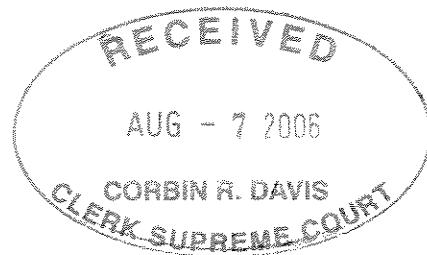
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August 4, 2006

Mr. Corbin Davis
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa
P. O. Box 30052
Lansing, MI 48909



Dear Mr. Davis:

RE ADM File #2006-26

I am writing to comment on the proposed amendment of MCR 3.921, specifically the proposed change in subrule (B)(1)(g). The change would expressly mandate that "the court ensure that the following persons are notified of each hearing:

- (g) the foster parents, pre-adoptive parents, and relative-caregivers of a child in foster care under the responsibility of the State."

This court strongly opposes the proposed change in its present form for the following reasons. I believe the intent of the proposal is meritorious, i.e., notice to foster parents. However, the proposal is impossible to comply with as a practical matter.

First, I have to presume that the language "under the responsibility of the State" refers to commitments to, placement with, or supervision by State DHS. (What else could it mean?)

If that presumption is correct, Michigan Court of Appeals caselaw and federal Title IV funding regulations under the Adoption and Safe Families Act mandate that to qualify for any federal funding for foster care payment, the circuit court can only, in its court orders, place a child "with DHS for care, placement, and supervision" or very similar language. Placement by court order with any entity or person other than DHS, or even ordering a level of care, disqualifies all federal funding, under current law. Also, as a matter of law, once the court so places a child with DHS, DHS has absolute, unfettered placement discretion. Further, there is no requirement that DHS tell the court where or with whom the child is, nor can the court require DHS to do so.

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In reality, DHS and its predecessors over the past fourteen years have formally notified our court in writing of childrens' foster parents or other placements less than half the time. In the majority of cases, DHS or its predecessors have notified the court verbally. In a significant percentage of cases, estimated between 10 and 20 percent, DHS has not told the court who the foster parents are or their address at all.

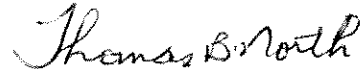
Therefore, the proposal that the court ensure notice of hearings to foster parents of a child under State responsibility is impossible to comply with in that significant percentage of cases in which, due to other current laws and mandates, the court has never been notified of the identity or address of those foster parents. Further, this court does not employ staff to contact DHS to request that information, nor is DHS required to give it if requested.

This court is aware that sometimes DHS withholds the foster parent information from the court. DHS is aware that if such a rule is adopted, and the court gives notice to a foster parent, MCR 3.920(H) requires a proof of service be filed in the public file. Therefore, everyone has access to foster parents' names and addresses by law, and the court cannot seal or otherwise hide that information. Therefore, DHS sometimes withholds that information in cases in which there is ongoing risk to a child's life or health if a respondent knows where the child is. We get cases like that, in which if the respondent knows where the child is, he or she will go after the child. This rule change would hand that information to perpetrators.

A better rule would be to require DHS, or any petitioner other than DHS, to privately notify foster parents since they know who they are, and would not be required to disclose it in a court file.

Thank you for the opportunity to comment.

Sincerely,



Thomas B. North
Probate Judge

TBN:jlr
cc: D. Jensen